

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CONNECTICUT BANK OF)
COMMERCE)
)
Plaintiff,)
)
v.) Civil Action No. 05-762 (SLR)
)
THE REPUBLIC OF CONGO)
)
Defendant.)
)

**AF-CAP'S OPPOSITION TO CMS NOMEKO'S MOTION FOR
LEAVE TO FILE SURREPLY BRIEF IN OPPOSITION TO
AF-CAP'S MOTION TO REMAND ACTION**

Plaintiff Af-Cap, Inc. ("Af-Cap"), as assignee of Connecticut Bank of Commerce, by and through its undersigned counsel, as and for its response to the Motion of CMS Nomeco Congo, Inc. ("CMS") for Leave To File Surreply Brief In Opposition To Af-Cap's Motion To Remand Action ("Surreply Motion"), respectfully states as follows:

1. CMS seeks to have another bite at the apple, having failed to provide any merit-based argument in its opposition to Af-Cap's Motion To Remand Action Pursuant To 28 U.S.C. § 1447 ("Motion for Remand") (D.I. 3). Rather than face the fact that the statutory framework of the Foreign Sovereign Immunities Act ("FSIA") and case law interpreting that framework demonstrate that this matter should be remanded and Af-Cap should be granted its attorneys fees, CMS seeks to file a surreply brief in another ill-fated attempt to refute Af-Cap's original arguments and to respond to Af-Cap's arguments in reply, which were based upon CMS' answering brief. In an effort to advance its

unorthodox cause, CMS casts undue aspersions on Af-Cap and distorts the clear record created by CMS' Notice of Removal (in which CMS asserts 28 U.S.C. §§1331 and 1441(a) as the statutory bases for removal), Af-Cap's Motion for Remand, CMS' opposition thereto, and Af-Cap's reply brief.

2. From the outset of the briefing on the Motion to Remand, Af-Cap's principal argument is that CMS lacks standing to remove this action. Motion for Remand at 1. CMS, in opposition, cited numerous cases -- none involving the FSIA -- that supposedly stand for the proposition that a garnishee is entitled to removal. (Garnishee CMS Nomeco's Answering Brief In Opposition To Af-Cap's Motion To Remand Action at 5-6 ("Answering Brief") (D.I. 5)). In Af-Cap, Inc.'s Reply Brief To Garnishee's Opposition To Motion To Remand ("Reply Brief") (D.I. 9), Af-Cap refuted these arguments and further demonstrated that the FSIA statutory framework and case law renders CMS' authorities inapposite to the question before the Court. In the course of responding to CMS' arguments, Af-Cap explained that by virtue of 28 U.S.C. §§ 1330 and 1441(d) there can be no dispute that a foreign sovereign is the sole party with removal authority, and also showed that CMS' attempt to bootstrap its way into federal court was inappropriate. Each argument was in direct rejoinder to pages 5-6 of CMS' Answering Brief in opposition to the Motion for Remand. Moreover, CMS apparently has forgotten that it originally asserted, as its bases for removal, Sections 1331 and 1441(a). (Notice of Removal at 1,4 (D.I. 1)). Simply put, CMS raised each of the arguments that Af-Cap refuted and now CMS seeks a chance to make these same flawed arguments again.

3. As the movant, it is axiomatic that Af-Cap is entitled to the last word in its reply brief. The Court should not alter that fundamental precept based on CMS' contrived view that Af-Cap raised new issues. If the Court were to grant such relief, it would be sanctioning CMS' attempt to sandbag Af-Cap. Such gamesmanship will not aid the Court in resolving this dispute. Rather, it will result in the filing of additional papers in a matter that the parties have fully and fairly briefed. Af-Cap raised no new arguments in its reply brief and there is no basis for CMS' contrary view. Accordingly, the Court should deny CMS' motion for leave to file a surreply brief.

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